

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-00298-06-CR-W-ODS
)	
GREGORY A. ESQUIVEL,)	
)	
Defendant.)	

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On February 28, 2008, the Honorable Sarah W. Hays, United States Magistrate Judge for the Western District of Missouri, issued her Report and Recommendation recommending that Defendant's pro se Motion to Suppress Evidence (Doc. # 343) and Defendant's Supplemental Motion for Suppression of Evidence and the Fruits Thereof (Doc. # 346) be denied. Defendant filed timely objections. Upon de novo review of the Record, the Court is persuaded that the Report's conclusions and resulting recommendation are correct.

The Report is detailed and thorough, so little needs to be added. Defendant contends that the search warrant lacked sufficient probable cause because the application for the search warrant and the search warrant itself had been file-stamped by the court June 12, 2006, while the affidavit for the search warrant was dated June 13, 2006. The Court overrules Defendant's objections and adopts the Report as the Order of the Court.

The Court finds that the evidence presented at the suppression hearing shows that it was clerical error that the search warrant and application contain the date of June 12 rather than June 13. Task Force Officer McAllister's testimony—that he typed the June 12 date on the documents because he planned to get the warrant to the judge before the early morning hours of June 13 and that he was present when the judge signed the warrant at 12:26 a.m. on June 13 is—credible. “[T]he inconsistency between the date on the warrant-application form and the date on the search warrant does not

eliminate probable cause” when the court finds the officer’s testimony of clerical error credible. United States v. White, 356 F.3d 865, 869 (8th Cir. 2004). Accordingly, Judge Hays’ Report and Recommendation is adopted as the Order of the Court, and Defendant’s Motion to Suppress is denied.

IT IS SO ORDERED.

DATE: March 14, 2008

/s/ Ortrie D. Smith

ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT